

Mr. REID. No.

I yield to my friend from Alaska.

Mr. STEVENS. We offered a list of amendments to staff. We informed the staff and we will be happy to show them the amendments when we see the amendments that Senator MCCAIN intends to offer.

Mr. REID. I also say that I misspoke. The majority leader does not need unanimous consent on his behalf.

I say to my friend from Arizona, as we have talked on a number of occasions on previous bills, any package of managers' amendments the Senator from Arizona will have a chance to review.

I withdraw the unanimous consent request and announce on behalf of the majority leader that following the vote on Judge Smith, the Senate will move to H.R. 5010, the Department of Defense appropriations bill.

Mr. BYRD. Reserving the right to object, and I will not object, let me say to the distinguished Senator from Arizona, that not only he will see the managers' amendments, but I will insist on the managers' amendments being read on all appropriations bills for the attention of the full Senate.

Mr. MCCAIN. Reserving the right to object, I thank the Senator from West Virginia.

We have had many occasions where late at night managers' amendments were agreed to without anyone ever having seen or heard of them. And I would still like to see the managers' amendment before some time late tomorrow night when everyone wants to get out of here and leave and I am the bad guy again. I want to see what is in the managers' amendment package.

It is not an illegitimate request to see the managers' amendment package before they vote on final passage, which then puts us in the uncomfortable position of having to be delayed. I think it is a fair request on the part of the taxpayers of America to see what we are voting.

Mr. REID. I yield to the Senator from Alaska.

Mr. STEVENS. Madam President, I am informed that 20 minutes ago those amendments went to Senator MCCAIN's office and we have not seen his amendments. We ask that we see his amendments, too. We cannot put a managers' package together until we see them all.

Mr. REID. Madam President, I ask the Senator from Arizona, do you have any problem with DOD appropriations after this vote?

Mr. MCCAIN. I don't.

I would like to say, any amendment that I have will be debated and voted on. I don't have the privilege of proposing a managers' amendment.

Mr. REID. Has the Senator withdrawn his objection?

Mr. BYRD. Parliamentary inquiry.

The PRESIDING OFFICER. The Senator from West Virginia.

Mr. BYRD. The Senator does not need consent, does he? The consent has already been given some days ago.

Mr. REID. As has been explained to me, the majority leader at this time—and I—can call this up, but would have to be, as I understand it, some later time.

I am asking for a time certain and that is why the Senator from Arizona, as I understand, has no problem bringing it up after this next matter.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. LEAHY. I ask for the yeas and nays on the pending nomination.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The question is, will the Senate advise and consent to the nomination of D. Brooks Smith, of Pennsylvania, to be United States Circuit Judge for the Third Circuit? On this question the yeas and nays have been ordered and the clerk will call the roll.

The legislative clerk called the roll.

Mr. NICKLES, I announce that the Senator from North Carolina (Mr. HELMS) is necessarily absent.

I further announce that if present and voting the Senator from North Carolina (Mr. HELMS) would vote "Yea".

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 64, nays 35, as follows:

[Rollcall Vote No. 202 Ex.]

YEAS—64

|           |            |             |
|-----------|------------|-------------|
| Allard    | Edwards    | McConnell   |
| Allen     | Ensign     | Miller      |
| Bayh      | Enzi       | Murkowski   |
| Bennett   | Fitzgerald | Nelson (FL) |
| Biden     | Frist      | Nelson (NE) |
| Bond      | Graham     | Nickles     |
| Breaux    | Gramm      | Roberts     |
| Brownback | Grassley   | Santorum    |
| Bunning   | Gregg      | Sessions    |
| Burns     | Hagel      | Shelby      |
| Byrd      | Hatch      | Smith (NH)  |
| Campbell  | Hollings   | Smith (OR)  |
| Carnahan  | Hutchinson | Snowe       |
| Carper    | Hutchison  | Specter     |
| Chafee    | Inhofe     | Stevens     |
| Cochran   | Kohl       | Thomas      |
| Collins   | Kyl        | Thompson    |
| Craig     | Landrieu   | Thurmond    |
| Crapo     | Lincoln    | Voinovich   |
| DeWine    | Lott       | Warner      |
| Domenici  | Lugar      |             |
| Dorgan    | McCain     |             |

NAYS—35

|          |           |             |
|----------|-----------|-------------|
| Akaka    | Durbin    | Mikulski    |
| Baucus   | Feingold  | Murray      |
| Bingaman | Feinstein | Reed        |
| Boxer    | Harkin    | Reid        |
| Cantwell | Inouye    | Rockefeller |
| Cleland  | Jeffords  | Sarbanes    |
| Clinton  | Johnson   | Schumer     |
| Conrad   | Kennedy   | Stabenow    |
| Corzine  | Kerry     | Torricelli  |
| Daschle  | Leahy     | Wellstone   |
| Dayton   | Levin     | Wyden       |
| Dodd     | Lieberman |             |

NOT VOTING—1

Helms

The nomination was confirmed.

#### LEGISLATIVE SESSION

The PRESIDING OFFICER. Under the previous order, the Senate will return to legislative session.

#### DEPARTMENT OF DEFENSE APPROPRIATIONS ACT, 2003

The PRESIDING OFFICER. Under the previous order, the Senate will proceed to the consideration of H.R. 5010, which the clerk will report by title.

The legislative clerk read as follows:

A bill (H.R. 5010) making appropriations for the Department of Defense for fiscal year ending September 30, 2003, and for other purposes.

The Senate proceeded to consider the bill which had been reported from the Committee on Appropriations with an amendment.

[Strike the part shown in bold brackets and insert in lieu thereof the part shown in italic.]

H.R. 5010

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

[That the following sums are appropriated, out of any money in the Treasury not otherwise appropriated, for the fiscal year ending September 30, 2003, for military functions administered by the Department of Defense, and for other purposes, namely:

#### [TITLE I

##### [MILITARY PERSONNEL

##### [MILITARY PERSONNEL, ARMY

[For pay, allowances, individual clothing, subsistence, interest on deposits, gratuities, permanent change of station travel (including all expenses thereof for organizational movements), and expenses of temporary duty travel between permanent duty stations, for members of the Army on active duty (except members of reserve components provided for elsewhere), cadets, and aviation cadets; and for payments pursuant to section 156 of Public Law 97-377, as amended (42 U.S.C. 402 note), and to the Department of Defense Military Retirement Fund, \$26,832,217,000.

##### [MILITARY PERSONNEL, NAVY

[For pay, allowances, individual clothing, subsistence, interest on deposits, gratuities, permanent change of station travel (including all expenses thereof for organizational movements), and expenses of temporary duty travel between permanent duty stations, for members of the Navy on active duty (except members of the Reserve provided for elsewhere), midshipmen, and aviation cadets; and for payments pursuant to section 156 of Public Law 97-377, as amended (42 U.S.C. 402 note), and to the Department of Defense Military Retirement Fund, \$21,874,395,000.

##### [MILITARY PERSONNEL, MARINE CORPS

[For pay, allowances, individual clothing, subsistence, interest on deposits, gratuities, permanent change of station travel (including all expenses thereof for organizational movements), and expenses of temporary duty travel between permanent duty stations, for members of the Marine Corps on active duty (except members of the Reserve provided for elsewhere); and for payments pursuant to section 156 of Public Law 97-377, as amended (42 U.S.C. 402 note), and to the Department of Defense Military Retirement Fund, \$8,504,172,000.

##### [MILITARY PERSONNEL, AIR FORCE

[For pay, allowances, individual clothing, subsistence, interest on deposits, gratuities, permanent change of station travel (including all expenses thereof for organizational movements), and expenses of temporary duty travel between permanent duty stations, for members of the Air Force on active duty (except members of reserve components provided for elsewhere), cadets, and aviation cadets; and for payments pursuant to section